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17 *Attorneys for Plaintiff Adam Buxbaum and
18 the putative Classes*

19 **UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA**

21 ADAM BUXBAUM, on behalf of himself and
22 all others similarly situated,

23 Plaintiff,

24 v.

25 GODIVA CHOCOLATIER, INC. and DOES
1 through 50,

26 Defendants.

27 CASE NO.:

28 **CLASS ACTION COMPLAINT**

1. **Violation of California Consumer
Legal Remedies Act**
2. **Violation of California Unfair
Competition Law**
3. **Violation of California False
Advertising Law**
4. **Breach of California Express
Warranty**
5. **Breach of California Implied
Warranty**
6. **Common Law Fraud**
7. **Intentional Misrepresentation**
8. **Negligent Misrepresentation**
9. **Unjust Enrichment and Common
Law Restitution**

29 **DEMAND FOR JURY TRIAL**

1 Plaintiff Adam Buxbaum (“Plaintiff”), on behalf of himself and all others similarly
 2 situated, brings this class action against Godiva Chocolatier, Inc. and DOES 1 through 50
 3 (collectively, “Godiva” or “Defendant”), seeking monetary damages, injunctive relief, and other
 4 remedies. Plaintiff makes the following allegations based on the investigation of his counsel and
 5 on information and belief, except as to allegations pertaining to Plaintiff individually, which are
 6 based on his personal knowledge.

7 **INTRODUCTION**

8 1. Plaintiff brings this consumer protection and false advertising class action lawsuit
 9 against Godiva based on its false and deceptive packaging and advertising practices with respect to
 10 a number of its chocolate products manufactured and sold in the United States bearing a “Belgium
 11 1926” statement on the label (the “Godiva Chocolate(s)” or “Product(s)”).

12 2. At all relevant times, Godiva has prominently displayed the “Belgium 1926”
 13 representation (the “Belgium Representation”) on the front packaging of all the Godiva
 14 Chocolates, representing that the Godiva Chocolates are made in Belgium.

15 3. Godiva also extensively utilizes the Belgium Representation across its entire
 16 marketing campaign, such as on its Godiva storefronts, supermarket display stands, and print and
 17 social media advertising.

18 4. Godiva intentionally plays on the false impression that the Godiva Chocolates are
 19 made in Belgium and then imported to the United States, in order to enhance the image of Godiva
 20 Chocolates as luxury chocolates. It does this because Belgian chocolates are widely known to be
 21 among the highest quality in the world.

22 5. However, unbeknownst to consumers, the Godiva Chocolates are not made in
 23 Belgium as represented. Rather, all of the Godiva Chocolates are made in Reading, Pennsylvania.

24 6. Plaintiff and other consumers purchased the Godiva Chocolates relying on
 25 Godiva’s Belgium Representation, and reasonably believing that the Godiva Chocolates are in fact
 26 made in Belgium.

27 7. Had Plaintiff and other consumers known that the Godiva Chocolates were not
 28 made in Belgium, they would not have purchased them, or would have paid significantly less for

1 them. Therefore, Plaintiff and consumers have suffered injury in fact as a result of Godiva's
2 deceptive practices.

3 8. Plaintiff brings this class action lawsuit on behalf of himself and all others similarly
4 situated. Plaintiff seeks to represent a Nationwide Class, a California Subclass, and a California
5 Consumer Subclass (defined *infra* in paragraph 38) (collectively referred to as the “Classes”).

6 9. Plaintiff, on behalf of himself and other consumers, is seeking damages, restitution,
7 declaratory and injunctive relief, and all other remedies the Court deems appropriate.

JURISDICTION AND VENUE

9 10. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act
10 of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action filed under Rule 23 of the Federal
11 Rules of Civil Procedure, there are thousands of proposed Class members, the aggregate amount
12 in controversy exceeds \$5,000,000 exclusive of interest and costs, and Godiva is a citizen of a
13 state different from members of the proposed Classes and Plaintiff.

14 11. This Court has personal jurisdiction over Godiva because Godiva has sufficient
15 minimum contacts with the State of California, and/or otherwise intentionally avails itself of the
16 markets in the State of California through the promotion, marketing, and sale of Godiva
17 Chocolates in this State to render the exercise of jurisdiction by this Court permissible under
18 traditional notions of fair play and substantial justice. Godiva also maintains at least 23 brick-and-
19 mortar stores in California, more than any other state in the country.¹

20 12. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial
21 part of the events or omissions giving rise to the claims occurred in this District. Specifically,
22 Plaintiff purchased the Godiva Chocolates in Sonoma County, which is located in this District.

PARTIES

24 13. Plaintiff Adam Buxbaum is a citizen of California, and he currently resides in
25 Sonoma County. In or around December 2017, Mr. Buxbaum purchased the Godiva Solid Milk
26 Chocolate bar from a Target store in Santa Rosa, California. In purchasing the Product, Mr.

²⁸ |¹ <https://stores.godiva.com/us.html> (last visited January 31, 2019).

1 Buxbaum saw and relied on the front label of the Product. Specifically, Mr. Buxbaum saw and
 2 relied on the phrase “Belgium 1926” on the label of the Product. Based on this representation, Mr.
 3 Buxbaum believed he was purchasing imported chocolate from Belgium. However, unbeknownst
 4 to Mr. Buxbaum, the Product that he purchased was not made in Belgium. Mr. Buxbaum would
 5 not have purchased the Product, or would have paid significantly less for it, had he known that it
 6 was not made in Belgium. Therefore, Mr. Buxbaum suffered injury in fact and lost money as a
 7 result of Defendant’s misleading, false, unfair, and fraudulent practices, as described herein.

8 14. Despite being misled by Defendant, Plaintiff wishes to and is likely to continue
 9 purchasing the Godiva Chocolates in the future. Although Plaintiff regularly visits stores where
 10 Defendant’s Godiva Chocolates are sold, absent an injunction prohibiting the deceptive labeling
 11 and advertising described herein, he will be unable to rely with confidence on Godiva’s
 12 representations in the future and will therefore abstain from purchasing the Products, even though
 13 he would like to purchase them. Furthermore, while Plaintiff currently believes the Godiva
 14 Chocolates are not made in Belgium, he lacks personal knowledge as to Godiva’s specific
 15 business practices, leaving doubt in his mind as to the possibility that some chocolates made by
 16 Godiva could be made in Belgium. This uncertainty, coupled with his desire to purchase the
 17 Products, is an ongoing injury that can and would be rectified by an injunction enjoining Godiva
 18 from making the false and/or misleading representations alleged herein. In addition, Class
 19 members will continue to purchase the Godiva Chocolates, reasonably but incorrectly believing
 20 that they are made in Belgium, absent an injunction.

21 15. Defendant Godiva Chocolatier, Inc. (d/b/a Godiva) is a New Jersey corporation
 22 with its principle place of business in New York, New York. Godiva directly and/or through its
 23 agents, formulates, manufactures, labels, markets, distributes, and sells the Products nationwide.
 24 Godiva has maintained substantial distribution and sales in this District.

25 16. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
 26 Plaintiff at this time, and Plaintiff therefore sues such DOE Defendants under fictitious names.
 27 Plaintiff is informed and believes, and thereon allege, that each Defendant designated as a DOE is
 28 in some manner highly responsible for the occurrences alleged herein, and that Plaintiff and Class

1 members' injuries and damages, as alleged herein, were proximately caused by the conduct of
 2 such DOE Defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the
 3 true names and capacities of such DOE Defendants when ascertained.

4 **FACTUAL ALLEGATIONS**

5 **A. Belgian Chocolates Are Well-Known For Their Quality**

6 17. Belgium is widely understood and recognized as producing among the highest
 7 quality chocolates in the world.² Indeed, Belgium is known for its rich history as a chocolate
 8 producing nation. In the early 20th century, Belgian chocolatier Jean Neuhaus Jr. invented the
 9 praline – the first “filled” chocolate product.³ The praline was a revolutionary invention for the
 10 chocolate industry and gave Belgian chocolatiers recognition for producing among the finest
 11 chocolates in the world.

12 18. To protect the Belgian chocolate image, the Belgian Royal Association of the
 13 Chocolate, Praline, Biscuits and Sugar Confectionary Industry (“CHOPRABISCO”) has
 14 developed the “Belgian Chocolate Code” that provides guidelines for labeling chocolate as coming
 15 from Belgium.⁴ Among other reasons, the Belgian Chocolate Code is based on the fact “that the
 16 reputation of high quality associated with ‘Belgian Chocolate’ frequently induces competitors to
 17 mislead consumers by using texts or illustrations referring to Belgium[.]”⁵

18 19. While this case is not predicated on Godiva’s violations of the Belgian Chocolate
 19 Code, it demonstrates the significance of the Belgium origin to the chocolate industry and to
 20 consumers generally.

21

22

23 ² The Brussels Times, *What makes Belgium's chocolate so popular?*, May 2, 2017 available at
 24 <http://www.brusselstimes.com/component/k2/8132/what-makes-belgium-s-chocolate-so-popular>
 (last visited on January 31, 2019).

25 ³ <https://www.neuhauschocolate.com/en/heritage.htm> (last visited on January 31, 2019).

26 ⁴ CHOPRABISCO, *Belgian Chocolate Code*, available at
 27 <http://www.choprabisco.be/engels/documents/BelgianChocolateCodeEN030507DEF.pdf> (last
 visited on January 31, 2019).

28 ⁵ *Id.*

1

2 **B. Godiva's "Belgium 1926" Representation**

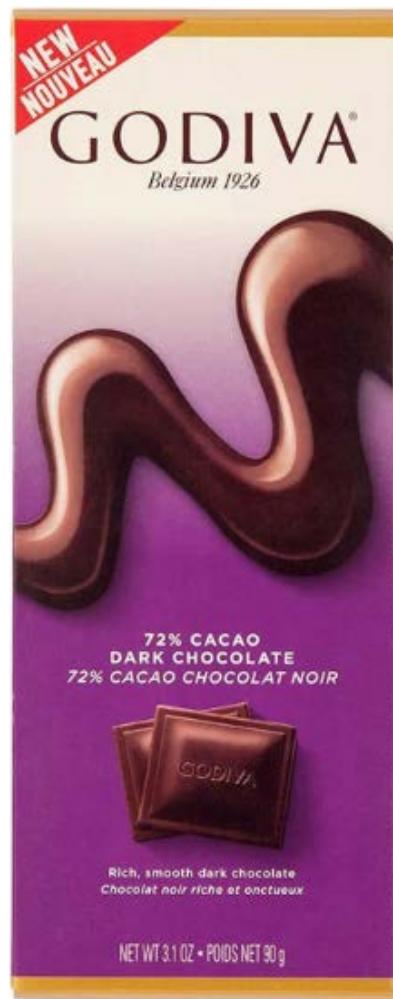
3 20. During the relevant statute of limitations period, Godiva directly and/or through its
 4 agents has formulated, manufactured, labeled, marketed, distributed and sold the Godiva
 5 Chocolates across California and the rest of the United States. The Godiva Chocolates are sold in
 6 Godiva brick and mortar stores and through third-party retailers, including, but not limited to,
 7 Target, Amazon.com, Walgreens, CVS, and Walmart.

8 21. Rather than be transparent in its packaging and advertising about the difference
 9 between its Belgian-made chocolates (sold outside the U.S.) and American-made chocolates (sold
 10 in the U.S.), Godiva has intentionally propagated the misconception that all of the Godiva
 11 Chocolates are made in Belgium. Godiva continues this deception to this day.

12 22. In 2009, Godiva began utilizing the signature phrase "Belgium 1926" on the
 13 product packaging of all Godiva Chocolates.

14 23. Since then, Godiva has ubiquitously and prominently used the Belgium
 15 Representation on the front packaging of the Godiva Chocolates:





1 24. Godiva has also implemented a multimillion-dollar marketing campaign that
2 reinforces the notion that the Godiva Chocolates are made in Belgium. Many of these
3 advertisements similarly have the Belgium Representation and other Belgium references as a focal
4 point (red border added for demonstrative purposes only):

5 Figure 1: Online Advertising



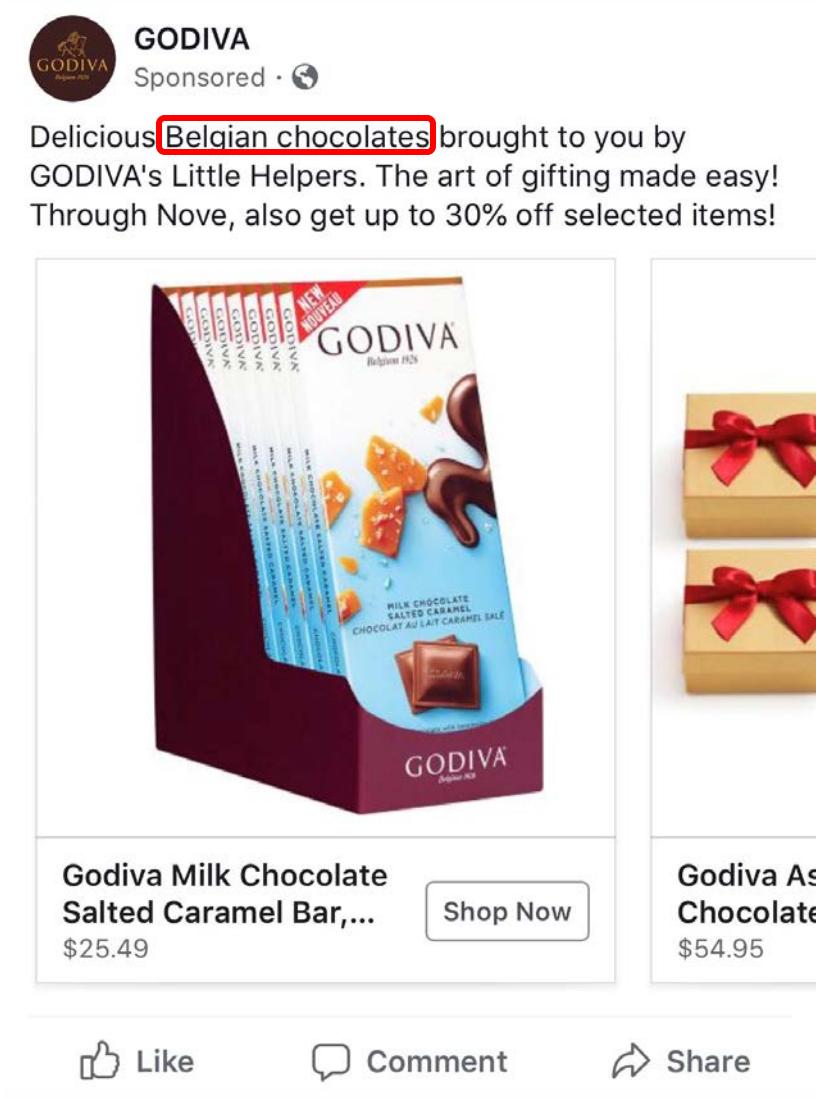
Figure 2: Storefront Advertising

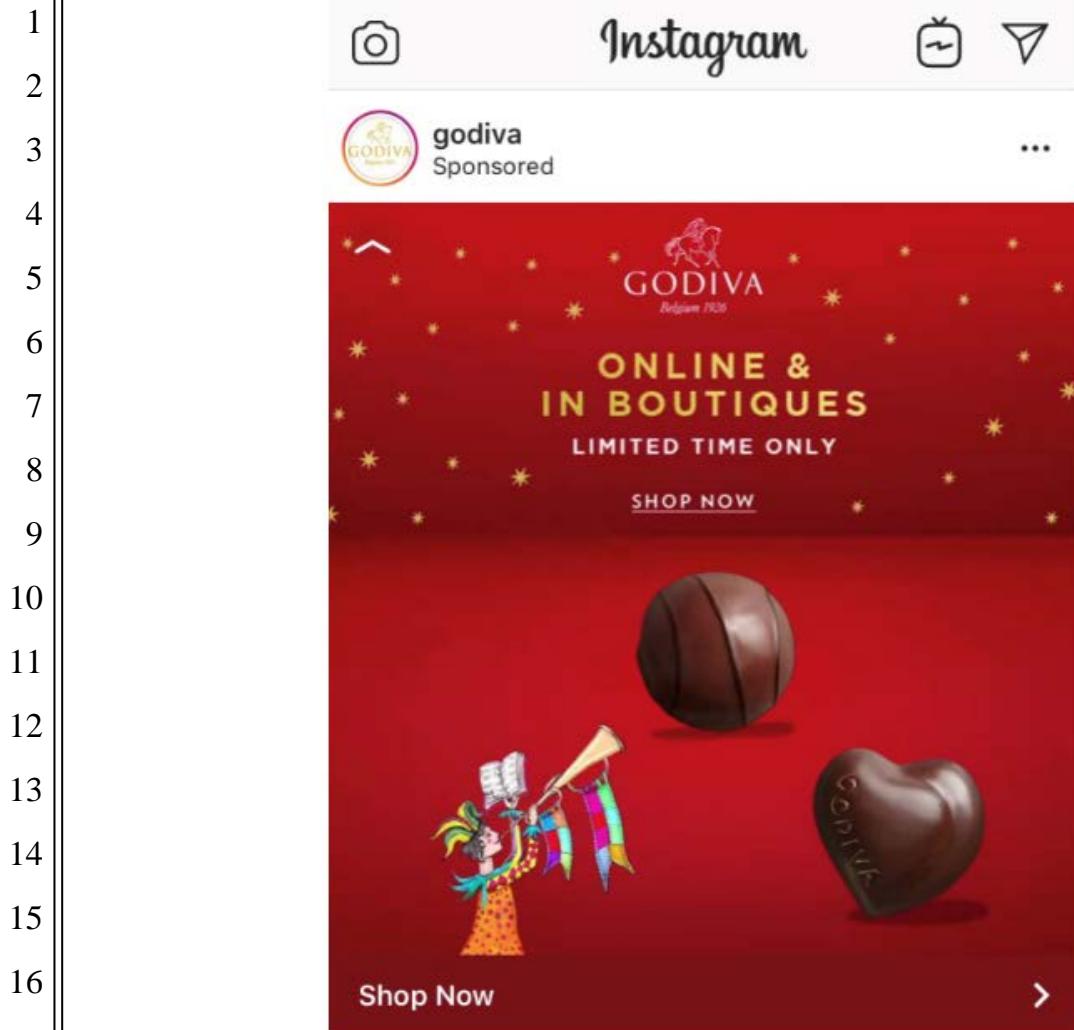


Figure 3: In-Store Advertising



Figure 4: Social Media Advertising





19 2,173 views

20 godiva Share exquisite **Belgian chocolates** brought to
 21 you by GODIVA's Little Helpers. The art of gifting
 22 made easy! Through December 9th, also get 20% off
 23 orders \$50+ and 25% off orders \$75+!

24 25. With its minimalist style, Godiva's marketing campaign revolves around its
 25 purported Belgian origin, thereby magnifying the Belgium Representation to consumers and
 26 reinforcing the misconception that the Godiva Chocolates are from Belgium.

1 **C. The Godiva Chocolates Are Not Made In Belgium**

2 26. None of the Godiva Chocolates are made in Belgium. Instead, all of the Godiva
 3 Chocolates during the relevant statute of limitations period have been made in Reading,
 4 Pennsylvania.

5 27. In addition to the perception that Belgian chocolates are premium chocolates, in
 6 Godiva's case, the difference between Belgian and non-Belgian chocolate represents a tangible
 7 difference in quality. For example, in a Washington Post article, Melanie Draps, the granddaughter
 8 of the founder of Godiva, states: "I've tried the American Godivas and they do taste different."⁶
 9 This taste difference is due in part, according to Ms. Draps, to the use of different butters, creams,
 10 and alcohol in the chocolates made in Belgium versus the chocolates sold in the United States.⁷

11 28. While the mere perception that the Godiva chocolates are from Belgium – and the
 12 emotional response that this belief elicits – is the primary driver of this case, it cannot be ignored
 13 that the actual ingredients used to make Godiva Chocolates also matter. In short, there is both a
 14 tangible and intangible difference between a true Belgian Godiva chocolate and a Godiva
 15 Chocolate made in Reading, Pennsylvania.

16 **D. The False and Deceptive Belgium Representation Harms Consumers**

17 29. Plaintiff and other consumers purchased the Godiva Chocolates, relying on
 18 Godiva's Belgium Representation, reasonably believing that the Godiva Chocolates are made in
 19 Belgium.

20 30. Plaintiff's and other consumers' reasonable belief that the Godiva Chocolates they
 21 purchased were made in Belgium was a significant factor in each of their decisions to purchase the
 22 Godiva Chocolates.

23
 24
 25 ⁶ Washington Post, *Godiva: Better in Belgium?*, Sept. 14, 1994, available at
 26 https://www.washingtonpost.com/archive/lifestyle/food/1994/09/14/godiva-better-in-belgium/7e011581-5fbb-43bf-bc7e-6db959bf5178/?utm_term=.64776ceecb33 (last visited
 27 January 31, 2019)

28 ⁷ *Id.*

1 31. Plaintiff and Class members did not know, and had no reason to know, that the
2 Godiva Chocolates were not made in Belgium because of how the Godiva Chocolates are
3 deceptively labeled and advertised to create the impression that they are made in Belgium.
4 Nothing on the front packaging of the Godiva Chocolates indicates the true manufacturing origin
5 of the chocolates to consumers.

6 32. As the entity responsible for the development, manufacturing, advertising, and sale
7 of the Godiva Chocolates, Godiva knew that each of the Godiva Chocolates bears the Belgium
8 Representation but is not made in Belgium.

9 33. Godiva knew or should have known that Plaintiff and other consumers, in
10 purchasing the Godiva Chocolates, would rely on Godiva's Belgium Representation and would
11 therefore reasonably believe that the Godiva Chocolates were made in Belgium.

12 34. Consumers are willing to pay more for chocolates made in Belgium. They are also
13 induced to make purchases that they otherwise would not have but for the belief that the chocolate
14 is from Belgium. Indeed, consumers, like Plaintiff, place inherent value on this perception, in
15 addition to any value placed on the chocolate due to taste.

16 35. Because the Godiva Chocolates are not made in Belgium, Defendant's branding of
17 the Godiva Chocolates was and continues to be misleading and deceptive.

18 36. Plaintiff and other consumers have paid a premium for the Godiva Chocolates.
19 Plaintiff and other consumers would have paid significantly less for the Godiva Chocolates had
20 they known that the Godiva Chocolates were not made in Belgium. In the alternative, Plaintiff and
21 other consumers would not have purchased the Godiva Chocolates at all had they known that the
22 Godiva Chocolates were not made in Belgium. Therefore, Plaintiff and other consumers
23 purchasing the Godiva Chocolates suffered injury in fact and lost money as a result of Defendant's
24 false, unfair, and fraudulent practices, as described herein.

25 37. Each Class member has been exposed to the same or substantially similar deceptive
26 practice, as each of the Godiva Chocolates have the same core "Belgium 1926" misleading
27 statement prominently printed on their labeling. All of the Godiva Chocolates create the similar
28 impression that they are made in Belgium.

CLASS ACTION ALLEGATIONS

2 38. Plaintiff brings this class action pursuant to Rule 23 of the Federal Rules of Civil
3 Procedure, individually and on behalf of all members of the following Nationwide Class,
4 California Subclass, and California Consumer Subclass.

Nationwide Class

All persons in the United States who, within the relevant statute of limitations period, purchased any of the Godiva Chocolates.

California Subclass

All persons who, within the relevant statute of limitations period, purchased any of the Godiva Chocolates in the state of California.

California Consumer Subclass

All persons who, within the relevant statute of limitations period, purchased any of the Godiva Chocolates for personal, family, or household purposes in the state of California.

13 39. Excluded from the Classes are the following individuals and/or entities: Defendant
14 and its parents, subsidiaries, affiliates, officers and directors, current or former employees, and any
15 entity in which Defendant has a controlling interest; all individuals who make a timely election to
16 be excluded from this proceeding using the correct protocol for opting out; and all judges assigned
17 to hear any aspect of this litigation, as well as their immediate family members.

18 40. Plaintiff reserves the right to modify or amend the definition of the proposed
19 Classes after having had an opportunity to conduct discovery.

20 || 41. Plaintiff is a member of all Classes.

21 42. Numerosity: The proposed Classes are so numerous that joinder of all members
22 would be impractical. Godiva Chocolates are sold across California and the United States at
23 Godiva-owned boutique stores, online, and through high-end third party retailers. The number of
24 individuals who purchased the Godiva Chocolates within the United States and the state of
25 California during relevant time period is at least in the thousands. Accordingly, Class members are
26 so numerous that their individual joinder herein is impractical. While the precise number of Class
27 members and their identities are unknown to Plaintiff at this time, these Class members are
28 identifiable and ascertainable.

1 43. Common Questions Predominate: There are questions of law and fact common to
2 the proposed Classes that will drive the resolution of this action and will predominate over
3 questions affecting only individual Class members. These questions include, but are not limited to,
4 the following:

5 a. Whether Defendant misrepresented material facts and/or failed to disclose
6 material facts in connection with the packaging, marketing, distribution, and
7 sale of the Godiva Chocolates;

8 b. Whether Defendant's use of false or deceptive packaging and advertising
9 constituted false or deceptive advertising;

10 c. Whether Defendant engaged in unfair, unlawful and/or fraudulent business
11 practices;

12 d. Whether Defendant's unlawful conduct, as alleged herein, was intentional and
13 knowing;

14 e. Whether Plaintiff and the Classes are entitled to damages and/or restitution, and
15 in what amount;

16 f. Whether Defendant is likely to continue using false, misleading or unlawful
17 conduct such that an injunction is necessary; and

18 g. Whether Plaintiff and the Classes are entitled to an award of reasonable
19 attorneys' fees, interest, and costs of suit.

20 44. Defendant has engaged in a common course of conduct giving rise to violations of
21 the legal rights sought to be enforced uniformly by Plaintiff and Class members. Similar or
22 identical statutory and common law violations, business practices, and injuries are involved. The
23 injuries sustained by members of the proposed Classes flow, in each instance, from a common
24 nucleus of operative fact, namely, Defendant's deceptive packaging and advertising of the Godiva
25 Chocolates. Each instance of harm suffered by Plaintiff and Class members has directly resulted
26 from a single course of illegal conduct. Therefore, individual questions, if any, pale in comparison
27 to the numerous common questions presented in this action.

1 45. Superiority: Because of the relatively small size of the individual Class members'
2 claims, no Class member could afford to seek legal redress on an individual basis. Furthermore,
3 individualized litigation increases the delay and expense to all parties and multiplies the burden on
4 the judicial system presented by the complex legal and factual issues of this case. Individualized
5 litigation also presents a potential for inconsistent or contradictory judgments. A class action is
6 superior to any alternative means of prosecution.

7 46. Typicality: The representative Plaintiff's claims are typical of those of the proposed
8 Classes, as all members of the proposed Classes are similarly affected by Defendant's uniform
9 unlawful conduct as alleged herein.

10 47. Adequacy: Plaintiff will fairly and adequately protect the interests of the proposed
11 Classes as his interests do not conflict with the interests of the members of the proposed Classes
12 he seeks to represent, and he has retained counsel competent and experienced in class action
13 litigation. The interests of the members of the Classes will be fairly and adequately protected by
14 the Plaintiff and his counsel.

15 48. This lawsuit is maintainable as a class action under Federal Rule of Civil Procedure
16 23 because Defendant acted, or failed to act, on grounds generally applicable to Plaintiff and the
17 proposed Classes, supporting the imposition of uniform relief to ensure compatible standards of
18 conduct toward the members of the Classes.

FIRST CLAIM FOR RELIEF
Violation of California's Consumers Legal Remedies Act ("CLRA"),
California Civil Code §§ 1750, et seq.
(for the California Consumer Subclass)

22 49. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if fully set
23 forth herein

24 50. Plaintiff brings this claim individually and on behalf of the members of the
25 proposed California Consumer Subclass against Defendant.

26 51. The Godiva Chocolates are “goods” within the meaning of Cal. Civ. Code §
27 1761(a), and the purchases of such Godiva Chocolates by Plaintiff and members of the California
28 Consumer Subclass constitute “transactions” within the meaning of Cal. Civ. Code § 1761(e).

1 52. Cal. Civ. Code § 1770(a)(2) prohibits “misrepresenting the source, sponsorship,
 2 approval, or certification of goods or services.” By marketing the Godiva Chocolates with their
 3 current packaging and advertisements, Defendant has represented and continues to represent that the
 4 source of the Godiva Chocolates is Belgium, when it is not. Therefore, Defendant has violated section
 5 1770(a)(2) of the CLRA.

6 53. Cal. Civ. Code § 1770(a)(4) prohibits “using deceptive representations or
 7 designations of geographical origin in connection with goods or services.” By marketing the
 8 Godiva Chocolates with their current packaging and advertisements, Defendant has used deceptive
 9 representations and designations of the chocolate’s geographical origin (Belgium). Therefore,
 10 Defendant has violated section 1770(a)(4) of the CLRA.

11 54. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have
 12 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have .
 13 . . .” By marketing the Godiva Chocolates with their current packaging and advertisements, Defendant
 14 has represented and continues to represent that the chocolate has characteristics (imported from
 15 Belgium) that it does not have. Therefore, Defendant has violated section 1770(a)(5) of the CLRA.

16 55. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of
 17 a particular standard, quality, or grade, or that goods are of a particular style or model, if they are
 18 of another.” By marketing the Godiva Chocolates with their current packaging and advertisements,
 19 Defendant has represented and continues to represent that the chocolate is of a particular style (made in
 20 Belgium) when it is of another (made in Reading, PA). Therefore, Defendant has violated section
 21 1770(a)(7) of the CLRA.

22 56. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent
 23 not to sell them as advertised.” By marketing the Godiva Chocolates with their current packaging
 24 and advertisements, such that a reasonable consumer would believe that the chocolate is from
 25 Belgium, Defendant has violated section 1770(a)(9) of the CLRA.

26 57. Defendant also violated the CLRA by intentionally failing to disclose that the
 27 Products are made in the U.S. in order to induce consumers’ purchases of the Products.

28 58. At all relevant times, Defendant has known or reasonably should have known that

1 the Godiva Chocolates were not chocolates from Belgium, but instead were made in the United
2 States, and that Plaintiff and other members of the California Consumer Subclass would
3 reasonably and justifiably rely on the packaging and other advertisements in purchasing the
4 chocolates.

5 59. Plaintiff and members of the California Consumer Subclass have reasonably and
6 justifiably relied on Defendant's misleading, and fraudulent conduct when purchasing the Godiva
7 Chocolates. Moreover, based on the materiality of Defendant's fraudulent and misleading conduct,
8 reliance may be presumed or inferred for Plaintiff and members of California Consumer Subclass.

9 60. Plaintiff and members of the California Consumer Subclass have suffered and
10 continue to suffer injuries caused by Defendant because they would not have purchased the
11 Godiva Chocolates or would have paid significantly less for the Godiva Chocolates had they
12 known that Defendant's conduct was misleading and fraudulent.

13 61. In accordance with Cal. Civ. Code § 1780(d), Plaintiff is filing a declaration of
14 venue, attached hereto to this Complaint.

15 62. Under Cal. Civ. Code § 1780(a), Plaintiff and members of the California Consumer
16 Subclass are seeking injunctive relief pursuant to the CLRA, preventing Defendant from further
17 wrongful acts and unfair and unlawful business practices, as well as restitution, disgorgement of
18 profits, and any other relief this Court deems proper.

19 63. Pursuant to Cal. Civ. Code § 1782, on November 28, 2018, counsel for Plaintiff
20 mailed a notice and demand letter by certified mail to Defendant of their intent to pursue claims
21 under the CLRA and other violations of the law, and an opportunity to cure, consistent with Cal.
22 Civ. Code § 1782. Defendant received the letter on December 3, 2018. Because Defendant has
23 failed to fully rectify or remedy the damages within 30 days of receipt of the letter, Plaintiff is
24 timely filing this Complaint for damages pursuant to the CLRA.

25

26

27

28

SECOND CLAIM FOR RELIEF
Violation of California's Unfair Competition Law ("UCL"),
California Business & Professions Code §§ 17200, et seq.
(for the California Subclass and California Consumer Subclass)

64. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if fully set forth herein.

65. Plaintiff brings this claim individually and on behalf of the members of the proposed California Subclass and California Consumer Subclass against Defendant.

8 66. Cal. Bus. & Prof Code § 17200 provides, in pertinent part, that “unfair competition
9 shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive,
10 untrue or misleading advertising . . .”

11 67. Under the UCL, a business act or practice is “unlawful” if it violates any
12 established state or federal law.

13 68. Defendant's false and misleading advertising of the Godiva Chocolates therefore
14 was and continues to be "unlawful" because it violates the CLRA, California's False Advertising
15 Law ("FAL"), and other applicable laws as described herein.

16 69. As a result of Defendant's unlawful business acts and practices, Defendant has
17 unlawfully obtained money from Plaintiff, and members of both the California Subclass and
18 California Consumer Subclass.

19 70. Under the UCL, a business act or practice is “unfair” if the defendants’ conduct is
20 substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive,
21 and unscrupulous, as the benefits for committing such acts or practices are outweighed by the
22 gravity of the harm to the alleged victims.

23 71. Defendant's conduct was and continues to be of no benefit to purchasers of the
24 Godiva Chocolates, as it is misleading, unfair, unlawful, and is injurious to consumers who rely on
25 the chocolate's packaging and marketing. Creating consumer confusion as to the actual location of
26 where the Godiva Chocolates are made is of no benefit to consumers. Therefore, Defendant's
27 conduct was and continues to be "unfair."

28 72. As a result of Defendant's unfair business acts and practices, Defendant has and

1 continues to unfairly obtain money from Plaintiff, and members of both the California Subclass
 2 and California Consumer Subclass.

3 73. Under the UCL, a business act or practice is “fraudulent” if it actually deceives or
 4 is likely to deceive members of the consuming public.

5 74. Defendant’s conduct here was and continues to be fraudulent because it has the
 6 effect of deceiving consumers into believing that the Godiva Chocolates are imported from
 7 Belgium, when they are not. Defendant’s conduct is also fraudulent because Defendant fails to
 8 disclose that the Products are made in the U.S. in order to induce consumers’ purchases of the
 9 Products. Because Defendant misled Plaintiff and members of both the California Subclass and
 10 California Consumer Subclass, Defendant’s conduct was “fraudulent.”

11 75. As a result of Defendant’s fraudulent business acts and practices, Defendant has
 12 and continues to fraudulently obtain money from Plaintiff, and members of both the California
 13 Subclass and California Consumer Subclass.

14 76. Plaintiff requests that this Court cause Defendant to restore this unlawfully,
 15 unfairly, and fraudulently obtained money to Plaintiff, and members of both the California
 16 Subclass and California Consumer Subclass, to disgorge the profits Defendant made on these
 17 transactions, and to enjoin Defendant from violating the UCL or violating it in the same fashion in
 18 the future as discussed herein. Otherwise, Plaintiff, and members of both the California Subclass
 19 and California Consumer Subclass, may be irreparably harmed and/or denied an effective and
 20 complete remedy if such an order is not granted.

21
THIRD CLAIM FOR RELIEF
Violation of California’s False Advertising Law (“FAL”),
California Business & Professions Code §§ 17500, et seq
(for the California Subclass and California Consumer Subclass)

24 77. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if fully set
 25 forth herein.

26 78. Plaintiff brings this claim individually and on behalf of the members of the
 27 proposed California Subclass and California Consumer Subclass against Defendant.

28 79. California’s FAL makes it “unlawful for any person to make or disseminate or

1 cause to be made or disseminated before the public . . . in any advertising device . . . or in any
2 other manner or means whatever, including over the Internet, any statement, concerning . . .
3 personal property or services professional or otherwise, or performance or disposition thereof,
4 which is untrue or misleading and which is known, or which by the exercise of reasonable care
5 should be known, to be untrue or misleading."

6 80. Defendant has represented and continues to represent to the public, including
7 Plaintiff and members of both the California Subclass and California Consumer Subclass, through
8 Defendant's deceptive packaging and marketing, that the Godiva Chocolates are made in Belgium
9 and imported to the United States. Defendant's representations are misleading because the Godiva
10 Chocolates are not made in Belgium and then imported to the United States. Because Defendant
11 has disseminated misleading information regarding the Godiva Chocolates, and Defendant knows,
12 knew, or should have known through the exercise of reasonable care that the representation was
13 and continues to be misleading, Defendant has violated the FAL.

14 81. Defendant's conduct is also misleading because Defendant fails to disclose that the
15 Products are made in the U.S. in order to induce consumers' purchases of the Products.

16 82. Furthermore, Defendant knows, knew or should have known through the exercise
17 of reasonable care that such representation was and continues to be unauthorized and misleading.

18 83. As a result of Defendant's false advertising, Defendant has and continues to
19 fraudulently obtain money from Plaintiff and members of both the California Subclass and
20 California Consumer Subclass.

21 84. Plaintiff requests that this Court cause Defendant to restore this fraudulently
22 obtained money to Plaintiff and members of both the California Subclass and California Consumer
23 Subclass, to disgorge the profits Defendant made on these transactions, and to enjoin Defendant
24 from violating the FAL or violating it in the same fashion in the future as discussed herein.
25 Otherwise, Plaintiff and members of both the California Subclass and California Consumer
26 Subclass may be irreparably harmed and/or denied an effective and complete remedy if such an
27 order is not granted.

28

FOURTH CLAIM FOR RELIEF**Breach of Express Warranty****California Commercial Code § 2313***(for the California Subclass and California Consumer Subclass)*

4 85. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if fully set
 5 forth herein.

6 86. Plaintiff brings this claim individually and on behalf of the members of the
 7 proposed California Subclass and California Consumer Subclass against Defendant.

8 87. California Commercial Code § 2313 provides that “(a) Any affirmation of fact or
 9 promise made by the seller to the buyer which relates to the goods and becomes part of the basis
 10 of the bargain creates an express warranty that the goods shall conform to the affirmation or
 11 promise,” and “(b) Any description of the goods which is made part of the basis of the bargain
 12 creates an express warranty that the goods shall conform to the description.” Cal. Com. Code §
 13 2313.

14 88. Defendant has expressly warranted on the packaging of the Godiva Chocolates that
 15 the chocolates are from Belgium. These representations about the Godiva Chocolates: (1) are
 16 affirmations of fact or promises made by Defendant to consumers that the Godiva Chocolates are
 17 in fact made in Belgium; (2) became part of the basis of the bargain to purchase the Godiva
 18 Chocolates when Plaintiff relied on the representations; and (3) created an express warranty that
 19 the Godiva Chocolates would conform to these affirmations of fact or promises. In the alternative,
 20 the representations about the Godiva Chocolates are descriptions of goods which were made as
 21 part of the basis of the bargain to purchase the Godiva Chocolates, and which created an express
 22 warranty that the Godiva Chocolates would conform to the product descriptions.

23 89. Plaintiff and members of both the California Subclass and California Consumer
 24 Subclass reasonably and justifiably relied on the foregoing express warranties, believing that the
 25 Godiva Chocolates did in fact conform to these warranties.

26 90. Defendant has breached the express warranties made to Plaintiff and members of
 27 both the California Subclass and California Consumer Subclass by failing to manufacture the
 28 Godiva Chocolates in Belgium.

1 91. Plaintiff and members of both the California Subclass and California Consumer
2 Subclass paid a premium price for the Godiva Chocolates but did not obtain the full value of the
3 chocolates as represented. If Plaintiff and members of both the California Subclass and California
4 Consumer Subclass had known of the true nature of the Godiva Chocolates, they would not have
5 purchased the chocolate or would not have been willing to pay the premium price associated with
6 the chocolate.

7 92. As a result, Plaintiff and members of both the California Subclass and California
8 Consumer Subclass suffered injury and deserve to recover all damages afforded under the law.

9 93. Within a reasonable amount of time after Plaintiff discovered that Defendant did in
10 fact breach the express warranty, Plaintiff notified Defendant of the breach.

FIFTH CLAIM FOR RELIEF

Breach of Implied Warranty

California Commercial Code § 2314

(for the California Subclass and California Consumer Subclass)

14 94. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if fully set
15 forth herein.

16 95. Plaintiff brings this claim individually and on behalf of the members of the
17 proposed California Subclass and California Consumer Subclass against Defendant.

18 96. California Commercial Code § 2314(1) provides that “a warranty that the goods
19 shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect
20 to goods of that kind.” Cal. Com. Code § 2314(1).

97. California Commercial Code § 2314(2) provides that “[g]oods to be merchantable must be at least such as . . . (f) conform to the promises or affirmations of fact made on the container or label if any.” Cal. Com. Code § 2314(2)(f).

24 98. Defendant is a merchant with respect to the sale of chocolates, including the
25 Godiva Chocolates here. Therefore, a warranty of merchantability is implied in every contract for
26 sale of the Godiva Chocolates to California consumers.

27 99. By advertising the Godiva Chocolates with their current packaging, Defendant
28 made an implied promise that the Godiva Chocolates were made in Belgium. By not making the

1 Godiva Chocolates in Belgium, Defendant has not “conformed to the promises...made on the
2 container or label.” Plaintiff and California consumers did not receive the goods as impliedly
3 warranted by Defendant to be merchantable.

4 100. Therefore, the Godiva Chocolates are not merchantable under California law and
5 Defendant has breached its implied warranty of merchantability in regard to the Godiva
6 Chocolates.

7 101. If Plaintiff and members of both the California Subclass and California Consumer
8 Subclass had known that the Godiva Chocolates were not made in Belgium, they would not have
9 purchased them or would not have been willing to pay the premium price associated with the
10 chocolates. Therefore, as a direct and/or indirect result of Defendant's breach, Plaintiff and
11 members of both the California Subclass and California Consumer Subclass have suffered injury
12 and deserve to recover all damages afforded under the law.

SIXTH CLAIM FOR RELIEF
Common Law Fraud
(for the Classes)

15 102. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if fully set
16 forth herein.

17 103. Plaintiff brings this claim individually and on behalf of the members of the Classes
18 against Defendant.

19 104. Defendant has willfully, falsely, or knowingly packaged and marketed the Godiva
20 Chocolates in a manner indicating that the Godiva Chocolates are luxury chocolates from
21 Belgium. However, the Godiva Chocolates are not made in Belgium. Therefore, Defendant has
22 made misrepresentations as to the Godiva Chocolates.

23 105. Defendant also failed to disclose that the Products are made in the U.S., in order to
24 induce consumers' purchases of the Products.

25 106. Defendant's misrepresentations and omissions are and were material (i.e., the type
26 of misrepresentations to which a reasonable person would attach importance and would be
27 induced to act thereon in making purchase decisions) because they relate to the characteristics of
28 the chocolates and where they were made.

1 107. Defendant knew or recklessly disregarded the fact that the Godiva Chocolates are
2 not made in Belgium.

3 108. Defendant intends that Plaintiff and other consumers rely on these representations
4 and omissions, as evidenced by Defendant's intentionally using labeling that either directly states
5 or clearly implies that the chocolates are from Belgium.

6 109. Plaintiff and members of the Classes have reasonably and justifiably relied on
7 Defendant's misrepresentations and omissions when purchasing the Godiva Chocolates, and had
8 the correct facts been known, would not have purchased the Godiva Chocolates or would not have
9 purchased them at the prices at which they were offered.

10 110. Therefore, as a direct and proximate result of Defendant's fraud, Plaintiff and
11 members of the Classes have suffered economic losses and other general and specific damages,
12 including but not limited to the amounts paid for the Godiva Chocolates, and any interest that
13 would have accrued on those monies, all in an amount to be proven at trial.

SEVENTH CLAIM FOR RELIEF
Intentional Misrepresentation
(for the Classes)

15 *for the Classes)*
16 111. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if fully set
forth herein.

19 113. Defendant marketed the Godiva Chocolates in a manner indicating that the Godiva
20 Chocolates are from Belgium. However, the Godiva Chocolates are not made in Belgium.
21 Therefore, Defendant has made misrepresentations as to the Godiva Chocolates.

114. Defendant's misrepresentations regarding the Godiva Chocolates are material to a
23 reasonable consumer because they relate to the characteristics of the chocolate. A reasonable
24 consumer would attach importance to such representations and would be induced to act thereon in
25 making purchase decisions.

26 115. At all relevant times when such misrepresentations were made, Defendant knew
27 that the representations were misleading, or have acted recklessly in making the representations,

1 without regard to the truth.

2 116. Defendant intends that Plaintiff and other consumers rely on these representations,
3 as evidenced by Defendant's intentionally using packaging that either directly states or clearly
4 implies that the chocolates are from Belgium.

5 117. Plaintiff and members of the Classes have reasonably and justifiably relied on
6 Defendant's intentional misrepresentations when purchasing the Godiva Chocolates and, had the
7 correct facts been known, would not have purchased the Godiva Chocolates or would not have
8 purchased them at the prices at which they were offered.

9 118. Therefore, as a direct and proximate result of Defendant's intentional
10 misrepresentations, Plaintiff and members of the Classes have suffered economic losses and other
11 general and specific damages, including but not limited to the amounts paid for the Godiva
12 Chocolates, and any interest that would have accrued on those monies, all in an amount to be
13 proven at trial.

EIGHTH CLAIM FOR RELIEF
Negligent Misrepresentation
(for the Classes)

16 119. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if fully set
17 forth herein.

18 120. Plaintiff brings this claim individually and on behalf of the members of the Classes
19 against Defendant.

20 121. Defendant marketed the Godiva Chocolates in a manner indicating that the Godiva
21 Chocolates were from Belgium. However, the Godiva Chocolates are not made in Belgium.
22 Therefore, Defendant has made misrepresentations as to the Godiva Chocolates.

23 122. Defendant's misrepresentations regarding the Godiva Chocolates are material to a
24 reasonable consumer because they relate to the characteristics of the chocolate. A reasonable
25 consumer would attach importance to such representations and would be induced to act thereon in
26 making purchase decisions.

27 123. At all relevant times when such misrepresentations were made, Defendant knew or
28 had been negligent in not knowing that the Godiva Chocolates were not imported from

1 Belgium. Defendant had no reasonable grounds for believing its misrepresentations were not false
2 and misleading.

3 124. Defendant intends that Plaintiff and other consumers rely on these representations,
4 as evidenced by Defendant's intentionally using packaging that either directly states or clearly
5 implies that the chocolates are from Belgium.

6 125. Plaintiff and members of the Classes have reasonably and justifiably relied on
7 Defendant's negligent misrepresentations when purchasing the Godiva Chocolates and, had the
8 correct facts been known, would not have purchased the Godiva Chocolates or would not have
9 purchased them at the prices at which they were offered.

10 126. Therefore, as a direct and proximate result of Defendant's negligent
11 misrepresentations, Plaintiff and members of the Classes have suffered economic losses and other
12 general and specific damages, including but not limited to the amounts paid for the Godiva
13 Chocolates, and any interest that would have accrued on those monies, all in an amount to be
14 proven at trial.

NINTH CLAIM FOR RELIEF
Quasi Contract/Unjust Enrichment/Restitution
(for the Classes)

17 127. Plaintiff repeats the allegations contained in paragraphs 1-48 above as if fully set
18 forth herein.

19 128. Plaintiff brings this claim individually and on behalf of the members of the Classes
20 against Defendant.

21 129. As alleged herein, Defendant has intentionally and recklessly made misleading
22 representations to Plaintiff and members of the Classes to induce them to purchase the Godiva
23 Chocolates. Plaintiff and members of the Classes have reasonably relied on the misleading
24 representations and have not received all of the benefits promised by Defendant. Plaintiff and
25 members of the Classes therefore have been induced by Defendant's misleading and false
26 representations about the Godiva Chocolates and paid for them when they would and/or should
27 not have or paid more money to Defendant for the chocolates than they otherwise would and/or
28 should have paid.

1 130. Plaintiff and members of the Classes have conferred a benefit upon Defendant as
2 Defendant has retained monies paid to it by Plaintiff and members of the Classes.

3 131. The monies received were obtained under circumstances that were at the expense of
4 Plaintiff and members of the Classes – i.e., Plaintiff and members of the Classes did not receive
5 the full value of the benefit conferred upon Defendant.

6 132. Therefore, it is inequitable and unjust for Defendant to retain the profit, benefit, or
7 compensation conferred upon them without paying Plaintiff and the members of the Classes back
8 for the difference of the full value of the benefits compared to the value actually received.

9 133. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and
10 members of the Classes are entitled to restitution, disgorgement, and/or the imposition of a
11 constructive trust upon all profits, benefits, and other compensation obtained by Defendant from
12 its deceptive, misleading, and unlawful conduct as alleged herein.

PRAYER FOR RELIEF

14 **WHEREFORE**, Plaintiff, individually and on behalf of the Class and Subclasses,
15 respectfully prays for following relief:

16 A. Certification of this case as a class action on behalf of the Class and Subclasses
17 defined above, appointment of Plaintiff as a Class representative, and appointment of his counsel
18 as Class counsel;

19 B. A declaration that Defendant's actions, as described herein, violate the claims
20 described herein;

21 C. An award of injunctive and other equitable relief as is necessary to protect the
22 interests of Plaintiff and the Classes, including, *inter alia*, an order prohibiting Defendant from
23 engaging in the unlawful act described above;

24 D. An award to Plaintiff and the proposed Classes of restitution and/or other equitable
25 relief, including, without limitation, restitutionary disgorgement of all profits and unjust
26 enrichment that Defendant obtained from Plaintiff and the proposed Classes as a result of its
27 unlawful, unfair and fraudulent business practices described herein;

E. An award of all economic, monetary, actual, consequential, compensatory, and treble damages caused by Defendant's conduct;

F. An award of punitive damages;

4 G. An award to Plaintiff and his counsel of their reasonable expenses and attorneys'
5 fees;

H. An award to Plaintiff and the proposed Classes of pre and post-judgment interest, to the extent allowable; and

I. For such further relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

10 Plaintiff, on behalf of himself and the proposed Classes, hereby demands a jury trial with
11 respect to all issues triable of right by jury.

DATED: January 31, 2019

By: /s/ *Benjamin Heikali*

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CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

I, Adam Buxbaum, declare as follows:

1. I am a named Plaintiff in this action and a citizen of the State of California. I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. This Class Action Complaint is filed in the proper place of trial because I purchased the Products in this District.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on 1/30/2019 | 9:09 PM PST, 2019 at Sebastopol, California.

DocuSigned by:



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Adam Buxbaum